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**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1947**

**No. 371**

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**LOUIS KREIGER, PETITIONER,**

*vs.*

**HELENE KREIGER**

---

**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE  
OF NEW YORK**

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**PETITION FOR CERTIORARI FILED SEPTEMBER 24, 1947.**

**CERTIORARI GRANTED NOVEMBER 24, 1947.**

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 371

LOUIS KREIGER, PETITIONER,

vs.

HELENE KREIGER

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE  
OF NEW YORK

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DEC. 29, 1947.

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**NEW YORK SUPREME COURT, APPELLATE DIVISION—FIRST DEPARTMENT**

[fol. 3] At a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the County of New York at the County Court House, in the Borough of Manhattan, City of New York, on the 22 day of April, 1946.

Present: Hon. Joseph A. Gavagan, Justice.

HELENE KREIGER, Plaintiff,

against

LOUIS KREIGER, Defendant

**ORDER APPEALED FROM**

The plaintiff above named having regularly moved this court, on the 3rd day of April, 1946, after an adjournment of the same from March 27, 1946, for an order, pursuant to Civil Practice Act, Section 1171-b, directing that the plaintiff have a money judgment against the defendant in the sum of \$3,960.00 representing unpaid arrears of alimony accruing under a judgment of separation made herein on December 9, 1940; and after reading and filing the order to show cause, dated March 22, 1946, signed by Hon. [fol. 4] Morris Eder, Justice, and the papers upon which the same was granted consisting of the affidavit of Helene Kreiger, duly sworn to on March 20, 1946, and a copy of the judgment of separation, all submitted and supported the motion; the affidavits of Louis Kreiger, sworn to on March 27, 1946, and Edward S. Joseph, sworn to on March 30, 1946, with "Exhibit I" and "Exhibit II", all submitted in opposition thereto; and due deliberation having been had;

Now, on motion of Charles Rothenberg, Esq., attorney for the plaintiff, and on filing the opinion of this court, it is

Ordered that this motion be and the same hereby is in all respects granted; and it is further

Ordered that the Clerk of the County of New York, upon the presentation to him of this order, be and he hereby is ordered and directed to enter a money judgment in favor

2  
of the plaintiff and against the defendant in the sum of \$3,960.00, pursuant to Section 1171-b of the Civil Practice Act, representing unpaid arrears of alimony for a period of sixty-six weeks, commencing with December 11, 1944; and it is further

Ordered that the plaintiff have execution therefor.

Enter,

J. A. G., J. S. C.

Filed April 23, 1946, New York County Clerk's Office.

[fols. 5-7] IN SUPREME COURT OF NEW YORK, COUNTY OF  
NEW YORK

JUDGMENT APPEALED FROM

The plaintiff having regularly moved this court for an order, pursuant to Civil Practice Act, Section 1171-b, directing the Clerk of the County of New York to enter a money judgment in her favor and against the defendant in the sum of \$3,960.00 for unpaid arrears of alimony accruing under the judgment of separation made herein on December 9, 1940, for the period of sixty-six weeks, commencing with December 11, 1944, and an order having been made by Mr. Justice Gavagan, dated the 22nd day of April, 1946, directing the entry of such judgment,

Now, on motion of Charles Rothenberg, Esq., attorney for plaintiff, it is

Adjudged that the plaintiff, Helene Kreiger, recover of the defendant, Louis Kreiger, the sum of \$3,960.00 and that she have execution therefor.

Dated: New York, N. Y., April 23, 1946.

Archibald R. Watson, Clerk.

Plaintiff's address: 175 West 93rd Street, New York, New York.

Defendant's address: Route No. 1, Greenfield Acres, Reno, Nevada.

[fol. 8] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

AFFIDAVIT OF HELENE KREIGER IN SUPPORT OF MOTION

STATE OF NEW YORK,  
County of New York, ss:

Helene Kreiger, being duly sworn, deposes and says:

I am the plaintiff in the above entitled action. By a judgment of this court made by the Hon. Samuel I. Rosenman, Justice, at Special Term, Part IV, on the 9th day of December, 1940, a copy of which is annexed herewith and made a part hereof, a judicial separation was rendered in my favor by reason of the defendant's abandonment and his failure and refusal to support myself and the issue of our marriage, Miles Monroe Kreiger. The aforesaid judgment of separation in addition directed that the defendant pay to me the sum of Sixty Dollars (\$60.00) per week for the support and maintenance of myself and our son. The said sum of Sixty Dollars (\$60.00) per weeks has not been modified, amended or reversed and is in full force and effect, and under the terms of the said judgment, the defendant is still obliged to pay that amount weekly. Commencing with December 11, 1944 the defendant has ceased paying the sum of Sixty Dollars (\$60.00) per week, pursuant to the aforesaid judgment but, in lieu thereof, has tendered the sum of Fifty Dollars (\$50.00) per month. Said checks of Fifty Dollars (\$50.00) per month have never been cashed by me.

The defendant is no longer within this jurisdiction having left this state during the year 1944. He is presently in [fol. 9] Reno, Nevada. While in Reno, Nevada, defendant instituted an action for divorce against me. I did not answer nor did I appear in that action. I realize and have been advised that the proceedings in the Nevada Court instituted by the defendant are a nullity insofar as I am concerned. I have instituted an action in the Federal Court in Nevada, which action is presently pending, to recover the sum of Three Thousand Sixty Dollars (\$3,060.00) which sum was due and owing to me at the time of the commencement of that action. No part of said sum has, as yet, been recovered.

I make this affidavit pursuant to Section 1171-b of the Civil Practice Act, for an order directing the Clerk of the County of New York to enter a money judgment in my favor and against the defendant in the sum of Three Thousand Nine Hundred Sixty Dollars (\$3,960.00) which represents unpaid arrears of alimony for a period of sixty-six weeks, commencing with December 11, 1944 continuously up to and including March 19, 1946. No judgment has ever been entered for said sum. The sixty-six weeks of alimony for which I seek a money judgment are all due and owing, the defendant having failed and refused to make payment of the Sixty Dollars (\$60.00) weekly except for the tender of the checks for Fifty Dollars (\$50.00) a month which I mentioned before and which checks I never cashed. Said sum of Three Thousand Nine Hundred Sixty Dollars (\$3,960.00) is presently due and owing and there is no prior money judgment entered for any part of said amount. Edward Joseph, Esq., of 36 West 44th Street, New York City, has been and still is the attorney for the defendant in this matter in this state. I therefore respectfully request that the Court direct that the service of these papers, including the order to show cause, be served upon the defendant by serving his attorney here in New York.

I have made no previous application for this relief.

Wherefore, I respectfully pray that the Court direct the entry of a money judgment in the sum of Three Thousand Nine Hundred Sixty Dollars (\$3,960), in my favor against the defendant, Louis Kreiger, together with appropriate interest and the costs of this motion.

(Sworn to by Helene Kreiger on March 20th, 1946.)

IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

AFFIDAVIT OF LOUIS KREIGER IN OPPOSITION TO MOTION

STATE OF NEVADA,

County of Washoe, ss:

Louis Kreiger, being first duly sworn, deposes and says: That I am the defendant in the above entitled action; that in the above entitled action on the 12th day of December, 1940, the above entitled Court:

"Ordered, adjudged and decreed that this defendant pay to this plaintiff at the office of George J. Beldock,



Esq., 205 West 34th Street, New York, New York, attorney for the plaintiff, a sum of Sixty dollars (\$60.00) per week for the support and maintenance of this plaintiff and the issue of the marriage, which said sum is to be paid on Monday of each week hereafter, [fol. 11] and is to be computed from Monday, October 21, 1940, and said computed sum, together with the weekly payment to be made by defendant immediately after the service upon him of a certified copy of this judgment is to be paid to the plaintiff",

and it was further ordered, adjudged and decreed:

"That testimony be taken before Hon. David L. Weil, Official Referee, and that he make report upon the amount of alimony to be paid by this defendant to the plaintiff, and that the Sixty dollars (\$60.00) per week alimony hereinbefore ordered shall be paid pending the making of such report and the confirmation thereof,"

That at the time of the entry of the order and judgment above mentioned, this defendant was a resident of the State of New York, and was engaged in business in the City of New York, State of New York. That this defendant, after the entry of said judgment, until on or about the 28th day of August, 1944, continued to reside within the State of New York. That on that date defendant abandoned his domicile and home in the State of New York and terminated his business relations therein. That in the State of New York, defendant had been until the end of the year 1941 in the business of manufacturing mink fur coats. That said business was terminated at the end of the year 1941. That prior to the 28th day of August, 1944, defendant resided at 22 Riverside Drive, New York City, at an apartment house thereat. That prior to leaving the State of New York defendant notified his lessor, Wood-Dolson & Company, [fol. 12] pany, that he was removing from said apartment and terminating the lease thereon. That said apartment was an unfurnished apartment and the furniture therein was owned by this defendant. That prior to the termination of said lease, this defendant had a telephone at 22 Riverside Drive, which he ordered disconnected before leaving the State of New York. That on or about the 28th day of August, 1944, this defendant caused to be shipped all of his household furniture from the State of New York to

Reno, Nevada, which shipment was made through the Lexington Moving Company of New York City. That at the time defendant left the State of New York, he severed all business associations and other relations therein, and abandoned his home and domicile therein. That this defendant arrived in Reno, Nevada, on or about the 12th day of September, 1944. That shortly after his arrival in Reno, Nevada, he purchased from one Charles Crosby a residence in Greenfield Acres, Washoe County, Nevada, where this defendant has resided ever since. That the purchase price of said home was Fifteen thousand dollars (\$15,000.00). That this defendant caused said residence in Greenfield Acres to be furnished with his own furniture shipped from the State of New York. That when this defendant left the State of New York, he did so with no intention of returning thereto but with the purpose and intention of making his permanent home within the State of Nevada and at Reno, Nevada. That ever since September 12, 1944, he has resided in Washoe County, Nevada, and has at all times had the intention so to do permanently. That when this defendant came to the State of Nevada he came here with the intention of engaging in the business of raising mink and the residence in Greenfield Acres is in a suburban area, [fol. 13] which at the time of its purchase this defendant believed to be suitable for the purpose of engaging in the business aforesaid. That since September 12, 1944, this defendant has been actually and physically present in the State of Nevada at all times save and except with the exception of a trip made to Washington, D. C. on a tax matter during the year 1944.

That upon defendant's arrival in the State of Nevada he opened a bank account in the City of Reno at the First National Bank, First and Virginia Branch, which account was a commercial account, and which account has been maintained as an active account ever since that time. That this defendant has no property, real or personal, in the State of New York. That all property of which he is possessed is located in the State of Nevada. That this defendant is the owner of a Chevrolet coupe automobile, which automobile was registered in the State of Nevada on or about the 26th day of October, 1944, and has continued to be so registered ever since that date. That this defendant is and for some time past has been a registered voter in Washoe County,

Nevada, and has been since the month of September, 1944, a taxpayer therein.

That on or about May 21, 1945, this defendant purchased a ranch in Washoe County, Nevada, located approximately ten (10) miles southerly from Reno, Nevada. That the purchase of said ranch was in furtherance of this defendant's plan to engage in the business of raising mink in the State of Nevada. That on or about the 26th day of October, 1944, this defendant commenced an action for divorce against the plaintiff above named, Helene A. Kreiger, in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, which action was numbered 85975. That summons in said action was served upon the plaintiff in the above entitled action in accordance with [fol. 14] the laws of the State of Nevada. That plaintiff above named failed to appear in said action and at a trial duly held in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, on the 12th day of December, 1944, said Nevada District Court made and entered a decree dissolving the bonds of matrimony between plaintiff and defendant. That in said action last named, the Court there ordered that this affiant should support, maintain and educate the minor child of the parties. That prior to the entry of said divorce decree, affiant paid to Helene Kreiger all sums required to be paid by the Court in this action up to that date. That thereafter he has forwarded to Helene Kreiger in care of her counsel, George J. Beldock, Esq., 205 West 34th Street, New York, New York, the sum of Fifty dollars (\$50.00) per month each and every month, beginning December 15, 1944. That said moneys were sent in the form of checks payable to Miles Kreiger, but said Helene Kreiger has never cashed said checks nor any thereof and still holds the same. That the said sum of Fifty dollars (\$50.00) per month is a reasonable sum for the support, maintenance and education of said minor child. That subsequent to said Nevada divorce decree and on the 12th day of December, 1944, this defendant married Zella Torin in Washoe County, Nevada, and ever since that date has been married to said Zella Torin. That there was born to this defendant and his wife, Zella Torin Kreiger, on February 4, 1946, a son named John Kreiger. That this defendant resides with his family at his home in Greenfield Acres, Washoe County, Nevada, above mentioned.

That on or about the 28th day of November, 1945, plaintiff in the above entitled action commenced in the District [fol. 15] Court of the United States for the District of Nevada an action No. 508 against this defendant, which action was for the recovery of Three thousand sixty dollars (\$3,060.00) claimed to be due by virtue of the judgment of the above entitled Court of December 12, 1940. That said demand of said Helene Kreiger of Three thousand sixty dollars (\$3,060.00) is made up of all amounts claimed to be due and payable by the judgment of this Court of December 12, 1940 up to the date of the institution of said action. That in said Federal Court action, said Helene Kreiger alleged that defendant was a citizen of the State of Nevada, residing at Reno, Washoe County, Nevada. That in the answer of this defendant in said Federal Court action, this defendant alleged as a part of his Seventh, Further and Affirmative Defense as follows:

## I

"That defendant herein is now and ever since September 12, 1944, has been a bona fide resident of and domiciled in the County of Washoe, State of Nevada.

## II

"That on the 12th day of December, 1944, in an action then pending between plaintiff and defendant in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, a judgment and decree was duly given, made and entered in said Second Judicial District Court of the State of Nevada, in and for the County of Washoe, in favor of this defendant and against the plaintiff in this action, adjudging that the bonds of matrimony between them [fols. 16-17] were dissolved and that each was forever released from the obligations thereof, a true copy of which judgment and decree is attached hereto, made a part hereof, and marked "Exhibit A".

That the judgment and decree which was attached to said action and mentioned in said Paragraph II above is the same judgment and decree of divorce herein mentioned as having been entered by the Second Judicial District Court of the State of Nevada, in and for the County of Washoe,



between plaintiff and defendant herein on the 12th day of December, 1944.

That at a pre-trial conference held before Honorable Roger T. Foley, United States District Court Judge for the District of Nevada, on the 29th day of January, 1946, plaintiff in this action was represented by Albert Hilliard, Esq., an attorney duly licensed to practice law in the State of Nevada, and this defendant was represented by the firm of Thatcher, Woodburn & Forman, Attorneys at Law, Reno, Nevada. That at said pre-trial conference the attorneys for this defendant and plaintiff herein entered into a stipulation whereby plaintiff in this action admitted the allegations contained in Paragraphs I and II of this defendant's Seventh, Affirmative Defense in said Federal action, which allegations are quoted in full hereinbefore.

That by reason of the foregoing this defendant states that he is not now and has not been since December 12, 1944 obligated to pay said Helene Kreiger any sums whatsoever save and except a reasonable amount required to be paid for the support, maintenance and education of the minor child of this defendant and plaintiff herein.

(Sworn to by Louis Kreiger, on March 27, 1946.)

[fol. 18]

## EXHIBIT 1.

No. 85975. Dept. No. 2

Thatcher & Woodburn  
Attorneys for PlaintiffIN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF WASHOEFiled Oct. 26, 2:26 PM '44. E. H. Beemer, Clerk. By  
B. Buchanan, Deputy.

LOUIS KREIGER, Plaintiff,

VS.

HELENE A. KREIGER, Defendant

## COMPLAINT

Comes now the plaintiff, by his attorneys, Thatcher and Woodburn, and for cause of action against defendant, alleges as follows:

## I

That plaintiff is now, and for more than six weeks preceding the filing of this complaint, has been a bona fide resident of and domiciled within the State of Nevada; that plaintiff, during all of said time, has been actually present and domiciled in the City of Reno, County of Washoe, State of Nevada.

## II

That the plaintiff and defendant were married at Yonkers, State of New York, on the 18th day of February, 1933, and ever since have been and now are, husband and wife.

[fol. 19]

## III

That there is one minor child the issue of the marriage, namely Miles Monroe Kreiger born March 28th, 1934; that plaintiff is willing to provide a reasonable sum for the support and maintenance of said minor child; that plaintiff is a fit and proper person to have both the custody of said minor child and reasonable rights of visitation.

## IV

That the plaintiff and defendant have lived separate and apart for more than three consecutive years immediately preceding the commencement of this action, without cohabitation.

Wherefore, plaintiff prays judgment of this Honorable Court as follows, to-wit:

1. That the bonds of matrimony now and heretofore existing between plaintiff and defendant be forever and completely dissolved, and that each party hereto be freed and released from all of the responsibilities and obligations thereof, and restored to the status of a single person;
2. That the Court make such orders as to the custody and support of said minor child as in the opinion of the Court may be for the best interests and welfare of said child.
3. For such other and further relief as may appear to the Court to be equitable in the premises.

Thatcher & Woodburn, Attorneys for Plaintiff.

Default of the Defendant for failing to appear, entered in open court, 12th day of Dec., A. D. 1944.

E. H. Beemer, Clerk, by A. L. Donati, Deputy Clerk.

[fol. 20] STATE OF NEVADA,  
County of Washoe, ss:

Louis Kreiger, being first duly sworn, deposes and says: That he is the plaintiff in the above entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated in information and belief, and as to those matters he believes it to be true.

Louis Kreiger.

Subscribed and sworn to before me this 26th day of October, 1944. Wm. Woodburn, Notary Public in and for the County of Washoe, State of Nevada  
(Seal.)

[fol. 21]

No. 85975. Dept. No. 2

Thatcher & Woodburn  
Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF WASHOE

Filed Oct. 26, 2:30 PM '44. E. H. Beemer, Clerk. By  
B. Buchanan, Deputy.

LOUIS KREIGER

VS.

HELENE A. KREIGER, Defendant

AFFIDAVIT FOR PUBLICATION OF SUMMONSSTATE OF NEVADA,

County of Washoe, ss:

Louis Kreiger, being first duly sworn, deposes and says:

That he is the plaintiff in the above entitled action; that the verified complaint in this action was filed in the office of the Clerk of the above entitled court on the 26th day of October, 1944, and summons in said action was on said date issued; that said action is brought for the purpose of obtaining a decree of absolute divorce from the defendant upon the ground that plaintiff and defendant have lived separate and apart for three consecutive years immediately preceding the commencement of this action, without cohabitation. That a cause of action exists against the defendant [fol. 22] and in favor of the plaintiff as appears from the verified complaint filed herein, to which reference is hereby made.

That the said defendant resides outside of the State of Nevada and does not reside within the State of Nevada, but resides at 175 West 93rd st., New York City, New York; that personal service of the summons herein cannot be made upon the defendant within this state; that the defendant's last known place of residence and her present residence is 175 West 93rd St., New York City, New York, and her present post office address is 175 West 93rd Street, New York City, New York, and that defendant is both a necessary and proper party to this action.



Affiant states that personal service of said summons cannot be made upon defendant in the State of Nevada, and asks that an order be made for the service of summons by publication thereof in the manner as by statute provided.

Louis Kreiger.

Subscribed and sworn to before me this 26th day of October, 1944. Wm. Woodburn, Notary Public in and for the County of Washoe, State of Nevada.  
(Seal.)

[fol. 23]

No. 85975. Dept. No. 2

Thatcher & Woodburn  
Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF WASHOE

Filed Oct. 26, 2:30 PM '44. E. H. Beemer, Clerk. By  
B. Buchanan, Deputy.

LOUIS KREIGER, Plaintiff,

VS.

HELENE A. KREIGER, Defendant

#### ORDER FOR PUBLICATION OF SUMMONS

Upon reading the affidavit of Louis Kreiger, made on the 26th day of October, 1944, and duly filed herein, from which it appears to the satisfaction of the court, and the court here finds that Helene A. Kreiger, the defendant herein, resides outside the State of Nevada, and that summons herein cannot be served upon said defendant within the State of Nevada; and it appearing from the verified complaint herein, and the court here finding that a cause of action exists in favor of the plaintiff and against the defendant herein, and that said defendant's last known place of residence is 175 West 93rd St., New York City, New York, and her present post office address is 175 West 93rd St., New York City, New York, and it further appearing that the [fol. 24] Nevada State Journal is a daily newspaper most likely to give notice to the defendant;

Now therefore, it is hereby ordered that summons in this action be served upon Helene A. Kreiger, the defendant

herein, by publication thereof in the Nevada State Journal, and that said publication be made for a period of four weeks, for at least once a week during said time.

It is further ordered and directed that a certified copy of the summons and complaint be forthwith deposited in the United States Post Office at Reno, Nevada, enclosed in an envelope upon which the postage is fully prepaid, directed to the defendant, Helene A. Kreiger, at 173 West 93rd st., New York City, New York.

It is further ordered that personal service of a certified copy of said summons and complaint in the above entitled action on the said defendant personally without the State of Nevada shall be equivalent to complete service by publication and deposit in the Post Office, and that said copy of summons and complaint may be served upon the said defendant as prescribed by statute.

Done in open court this 26th day of October, 1944.

Edgar Eather, District Judge Presiding.

[fo]. 25]

No. 85975. Dept. No. 2

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF WASHOE

Filed Nov. 9, 3:25 P. M. '44. E. H. Beemer, Clerk, by M.  
Jensen, Deputy.

LOUIS KREIGER, Plaintiff,

vs.

HELENE A. KREIGER, Defendant

### SUMMONS

The State of Nevada Sends Greetings to the Said Defendant:

You are hereby summoned to appear within ten days after the service upon you of this Summons if served in said county, or within twenty days if served out of said county but within said Judicial District, and in all other cases within thirty days (exclusive of the day of service), and defend the above-entitled action. This action is brought to recover a judgment, and decree of this Honorable Court

forever dissolving the bonds of matrimony now and heretofore existing between you and the plaintiff on the ground that plaintiff and defendant have lived separate and apart [fol. 26] for three consecutive years immediately preceding the commencement of this action, without cohabitation, as is more fully described in the complaint.

Dated this 26th day of October, A. D. 1944.

E. H. Beemer, Clerk of the Second Judicial District Court of the State of Nevada, in and for Washoe County, by B. Buchanan, Deputy.

Thatcher & Woodburn, Attorneys for Plaintiff.

STATE OF NEW YORK,  
County of New York—ss.:

**AFFIDAVIT OF SERVICE**

Norman Legun being first duly sworn, deposes and says: That he is and was on the day when he served the annexed summons, a citizen of the United States, over the age of twenty-one years, and not a party to the above entitled action; that he received the annexed summons in said action on the 31st day of October, 1944 and personally served the same upon Helene A. Kreiger the above-named defendant on the 4th day of November, 1944, by delivering to said Helene A. Kreiger the said defendant personally, in New [fol. 27] York City, County of New York, State of New York, a copy of the annexed summons attached to a duly certified copy of the complaint in the above-entitled action.

Norman Legun.

Subscribed and sworn to before me this 4th day of November, 1944. Harry Talfus, Notary Public in and for the County of —. Notary Public, Bronx County. Bronx County Clk's No. 13. County Clk's No. 161. Commission Expires March 30, 1945. New York County Clerk's Cert. #161. (My Commission expires March 30, 1945.) (Seal.)

Thatcher & Woodburn, Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF WASHOE

LOUIS KREIGER, Plaintiff,

vs.

HELENE A. KREIGER, Defendant

Filed Oct. 28, 11:02 A. M. '44. E. H. Beemer, Clerk, by B.  
Buchanan, Deputy.

AFFIDAVIT OF MAILING SUMMONS AND COMPLAINT

STATE OF NEVADA,

County of Washoe—ss.:

VELD MOREBY, being first duly sworn, deposes and says:  
That she is a citizen of the United States over the age of  
twenty-one years and not a party to the above entitled  
action;

That on the 26th day of October, 1944, in pursuance of  
an order issued by the above entitled court, she deposited  
in the United States Post Office in the City of Reno, County  
of Washoe, State of Nevada, a full, true and correct copy  
of the original Alias Summons issued in said action, at-  
tached to a certified copy of the original complaint now on  
file in said action, directed to Mrs. Helene A. Kreiger, the  
said defendant, at 175 West 93rd St., New York City, New  
[fol. 29] York, the place named in the affidavit for publica-  
tion of summons of the plaintiff in said action as the last-  
known residence and post-office address of said defendant,  
and paid sufficient postage thereon in advance.

Velda Morby.

Subscribed and sworn to before me this 27th day of  
October, 1944. Audrey Annett, Notary Public in  
and for the County of Washoe, State of Nevada.  
(Seal.)



[fol. 30] No. 85975. Dept. No. 2

Thatcher & Woodburn, Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF WASHOE

Filed Dec. 12, 11:20 A. M. '44. E. H. Beemer, Clerk, by  
M. Dowd, Deputy.

LOUIS KREIGER, Plaintiff,

VS.

HELENE A. KREIGER, Defendant

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled action coming on regularly for trial on the twelfth day of December, 1944, before the above entitled court, the undersigned District Judge, presiding, sitting without a jury, a trial by jury having been waived; the plaintiff appearing personally and by his attorneys, Messrs. Thatcher and Woodburn, and the defendant not appearing, and said cause coming on for trial on all of the pleadings herein, and it appearing to the satisfaction of the court that the defendant, Helene A. Kreiger, was regularly served with process on the fourth day of November, 1944, at New York City, State of New York, and has failed, within the legal time allowed by law for demurring or [fol. 31] answering, to demur or answer to the complaint of plaintiff on file herein, and that the default of said defendant has been duly and regularly entered as required by law, and evidence thereupon being introduced in said cause, the said cause was submitted to the court for its decision, and the court being fully advised in the premises, now makes its Findings of Fact and Conclusions of Law as follows, to-wit:

### FINDINGS OF FACT

#### I

That plaintiff is now, and for more than six weeks preceding the filing of the complaint herein has been a bona fide resident of and domiciled within the State of Nevada; that plaintiff, during all of said time, has been actually present and domiciled in the City of Reno, County of Washoe, State of Nevada.

## II.

That the plaintiff and defendant were married at Yonkers, State of New York, on the 18th day of February, 1933, and ever since have been, and now are, husband and wife.

## III

That there is one minor child the issue of the marriage, namely, Miles Monroe Kreiger, born March 28th, 1934. That the plaintiff is a fit and proper person to have full and complete custody of said minor child with the right on the part of the defendant to see and visit said child at all reasonable times.

[fol. 32]

## IV

That plaintiff and defendant have lived separate and apart for more than three consecutive years immediately preceding the commencement of this action, without cohabitation.

## CONCLUSIONS OF LAW

As Conclusions of Law from the foregoing Facts, the court finds:

## I

That plaintiff is entitled to a decree of divorce herein forever dissolving the bonds of matrimony now existing between plaintiff and defendant and releasing said plaintiff and defendant, and each of them, from the obligations thereof, and restoring said plaintiff and defendant, and each of them, to the status of unmarried persons, and granting plaintiff an absolute divorce from defendant.

## II

That the plaintiff is a fit and proper person to have the full and complete custody of the minor child of the parties, namely, Miles Monroe Kreiger, with the right on the part of the defendant to see and visit said child at all reasonable times. That the plaintiff shall support, maintain and educate said child.

Let Judgment be entered accordingly.

Done in open court, this 12th day of December, 1944.

A. J. Maestretti, District Judge.

[fol. 33]

No. 85975. Dept. No. 2

Thatcher & Woodburn,  
Attorneys for PlaintiffIN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF WASHOEFiled Dec. 12, 11:20 A. M. '44, E. H. Beemer, Clerk,  
by M. Dowd, Deputy.

LOUIS KREIGER, Plaintiff

VS.

HELENE A. KREIGER, Defendant

## JUDGMENT AND DECREE OF DIVORCE

The above entitled action came on regularly for trial on the twelfth day of December, 1944, before the above entitled court, the undersigned District Judge presiding, sitting without a jury, a trial by jury having been waived, and the plaintiff appearing personally and by his attorneys, Messrs. Thatcher and Woodburn, and the defendant not appearing, and said cause came on for trial upon all of the pleadings herein, and it appearing to the satisfaction of the court that the defendant has failed, within the legal time allowed by law for demurring or answering, to demur or answer to the complaint of plaintiff on file herein and that the default of said defendant has been duly and regularly entered as required by law, and evidence thereupon having been introduced in said cause and the said cause having been submitted to the court for its decision, and the court being fully advised in the premises and having heretofore filed its Findings of Fact and Conclusions of Law wherein it finds that plaintiff is entitled to a decree as hereinbefore provided;

Now, therefore, it is ordered, adjudged and decreed that the bonds of matrimony heretofore and now existing between the plaintiff and defendant be, and the same hereby are, forever dissolved, and the same are declared forever at an end; that the said plaintiff and defendant are each forever released from the obligations thereof and each is hereby restored to the status of unmarried persons, and that the plaintiff be, and he is hereby granted a decree of

absolute divorce herein forever dissolving the bonds of matrimony existing between plaintiff and defendant.

It is further ordered, adjudged and decreed that the full and complete custody of the minor child, Miles Monroe Kreiger, is awarded to the plaintiff and that the plaintiff shall support, maintain and educate said child. The defendant herein shall have the right to see and visit said minor child at all reasonable times.

The court reserves jurisdiction to make further and different orders herein with reference to the custody and support of the minor child.

Done in open court this 12th day of December, 1944.

A. J. Maestretti, District Judge.

Recorded in Judgment Record, Book A66, Pages 365-66.  
E. H. Beemer, County Clerk, by A. L. Donati, Deputy Clerk.

[fol. 44] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

HELENE KREIGER, Plaintiff,

against

LOUIS KREIGER, Defendant

AFFIDAVIT OF HELENE KREIGER

STATE OF NEW YORK,  
County of New York, ss:

HELENE KREIGER, being duly sworn, deposes and says:

I am the plaintiff in the above entitled action and respectfully submit this affidavit in support of my motion for an injunction pendente lite against the defendant, Louis Kreiger, who is my husband, to restrain him, during the pendency of this action, from prosecuting an action for divorce against me, as defendant, in the State of Nevada or in any other State except the State of New York, and from taking any steps in such action for the purpose of obtaining a final decree of divorce. This action is brought for a permanent injunction for the same relief and further, to restrain the defendant from contracting or entering into marriage with a person other than myself.



The defendant and I were married in the City of Yonkers, State of New York, on the 19th day of February, 1933, and thereafter resided in the County and City of New York. On [fol. 45] March 28th, 1934, our son, Miles, the only issue of our marriage was born. The following year, sometime in August, 1935, the defendant, without any previous serious argument, and certainly without any justification, informed me that he was unhappy and dissatisfied with married life, that he disliked the responsibilities of supporting a family, that he regretted having married me and had decided to leave me and the child. After this conversation, he packed all his belongings, left our home, and has not since resided with me.

Prior to the defendant's abandonment of me and our child, I had not made any investigation as to his income and financial responsibility. I knew that he was engaged in business as a manufacturing furrier in the City of New York, together with his father. During our married life, he supported me comfortably and I did not feel there was any occasion to investigate his actual income. Thus, when the time came to make provision for our child and myself, I accepted his statement that all he received, as compensation for his work in the corporation in which he was employed, was \$100.00 weekly. Based upon my husband's representations that the sum of \$100.00 weekly was his only income, I agreed to enter into a separation agreement which provided for the payment to me of the sum of \$35.00 weekly for the support of myself and our child. This agreement was entered into on September 9th, 1935. During the ensuing two years, I obtained information from various sources that my husband had grossly misrepresented to me the extent of his income. Investigation disclosed that his annual income at the time of the making of the separation agreement was well over \$10,000; That instead of being an employee of the fur manufacturing company with which he [fol. 46] was connected, the company was actually his own, and that he had formed several corporations in order to hide the true identity of the ownership and of the source of the funds with which the companies were capitalized. Furthermore, I learned that he had made a settlement with the United States Government for Federal Excise Taxes, by the payment of approximately \$40,000, representing sales which he had not reported.

By reason of the disclosure of these facts, and my inability to properly support myself and our child on the amount paid to me by the husband under the separation agreement, I commenced an action, sometime in 1937, to cancel and set aside the separation agreement entered into with the defendant, by reason of the concealment by the defendant of the true extent and value of his assets and the gross inadequacy of the allowance paid to me for the support of myself and our child. I also requested in the complaint a legal separation against the defendant; by reason of his abandonment of myself and the child.

The action came on to be trial before Mr. Justice Samuel I. Rosenman, of this Court, on the 23rd and 24th days of September, 1940, and a full and complete trial of the issues was had. On October 21st, 1940, Mr. Justice Rosenman rendered his decision, granting full judgment in my favor. His opinion was as follows:

"Kreiger v. Kreiger—Concealment by the defendant of the true extent and value of his assets, together with the gross inadequacy of the allowance in the separation agreement for the plaintiff and the issue of the marriage entitle the plaintiff to a cancellation of the agreement *Heaney v. Heaney*, 255 App. Div., 879, Aff'd [fol. 47] 280 N. Y. 638; *Vose vs. Vose*, 255 App. Div., 1012, Aff'd 280 N. Y., 779). Plaintiff is awarded a separation on the ground of abandonment. The matter is referred to Hon. David L. Weil, official referee, to take testimony and report on the amount of alimony. In the meantime, pending such report and confirmation, alimony is fixed at \$60 per week for the support of the plaintiff and the issue of the marriage. Settle findings and conclusions."

On December 9th, 1940, findings of fact, conclusions of Law and interlocutory judgment were signed by Mr. Justice Rosenman, which, in substance, found that the separation agreement be cancelled and set aside because of the concealment by defendant of the extent of his assets and because of the inadequacy of the support provision; that I be granted a separation by reason of the abandonment on the part of the defendant, and that he pay the sum of \$60.00 weekly for the support of myself and our child, pending a report thereon by an Official Referee. The provision for the payment of \$60.00 weekly was thereafter made permanent.

The defendant thereafter appealed to the Appellate Division, First Department, from the judgment entered against him, and the Appellate Court thereafter unanimously affirmed Mr. Justice Rosenman's decision.

During the ensuing four years since the rendition of the decision in my favor by Mr. Justice Rosenman, I have had considerable difficulty in obtaining regular payments from the defendant. These payments have been spasmodic and many weeks would pass before payments would be made. [fol. 48] Although the defendant was living expensively and well, the weekly amounts due to me were not made until my attorney threatened legal action and made continuous calls to the defendant's lawyer advising him of such defaults.

Through mutual acquaintances and other sources, I learned that about two years ago, the defendant had become interested in a woman, whose name is Zella Torin, who, until sometime during the summer of this year, was employed by Time Magazine, at 9 Rockefeller Plaza, New York City. I further learned that for the past year and a half Miss Torin had been staying regularly at the defendant's apartment at 22 Riverside Drive, New York City. She lived at 8015 Grenfell Avenue, Kew Gardens, Queens, New York, and the defendant, who visited her frequently at this address, was believed to be her husband.

During the past year, I have been approached, on a number of occasions, by mutual acquaintances and intermediaries on behalf of my husband, with the request that I consent to a friendly divorce, and if I would so consent, the defendant would make it worth while financially. I have further been advised that my husband stated that if I did not consent to a divorce, he would go out of the State for a short period of time and would get a divorce in Nevada or Florida, whether I liked it or not, and would stop paying me anything for my support, and would only make provision for my son. I rejected all of these overtures and stated that I was not interested in any divorce.

The defendant moved from his apartment at 22 Riverside Drive, New York City, on August 28th, 1944. On September 6th, I called up his home, as he was then five weeks in arrears in the payments that were due to me, and I was [fol. 49] advised by the operator that his telephone had been disconnected. The following day, I went over to the house and spoke to the Superintendent, who told me that

the defendant had moved from the premises on August 28th, between 9:00 and 10:00 A. M.; that he had gone up to the defendant's apartment and asked him for a forwarding address, and the defendant stated that he would communicate with him later on. I was told by the Superintendent that with Mr. Kreiger, at the time, was the lady who had frequently been at the apartment. I thereafter learned that the defendant had left New York City by automobile for Nevada, and that shortly thereafter, Miss Torin left New York to join him. I have been informed that she is with him at the present time, at Reno.

On October 30th, 1944, I received by mail, from attorneys Thatcher & Woodburn, of 206 North Virginia Street, Reno, Nevada, a copy of an alias summons and complaint in an action brought against me, as defendant, by Louis Kreiger, as plaintiff, in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe. The complaint was filed in the Office of the Clerk of said Court on October 26th, 1944, at 2:26 P. M. and bears Docket No. 85975. The complaint, a copy of which is annexed hereto and marked Exhibit "A", prays for a judgment for absolute divorce, on the ground that the parties have lived separate and apart for more than three consecutive years immediately preceding the commencement of this action, without cohabitation. Obviously, this is not a ground for divorce in the State of New York, as no allegation of my adultery has been made. The defendant's complaint further alleges that plaintiff is a fit and proper person to have the custody of the issue of our marriage, although our son's custody was [fol. 50] placed in my hands by the decree entered by Mr. Justice Rosenman.

No personal service of the summons and complaint has, as yet, been effected upon me, although I believe that a process server is attempting to serve me personally at the present time. I have been advised that a judgment for absolute divorce may be granted to defendant against me on the 31st day following the service of the summons and complaint upon me. I also am certain that immediately after the granting of such proposed divorce decree against me, in the action commenced by the defendant in the State of Nevada, the defendant intends to and will marry Zella Torin. In view of the fact that the defendant did not leave the City and State of New York until sometime after August 28th, 1944, it is obvious that the defendant has been in the



City of Reno, State of Nevada, for only slightly more than six weeks prior to the 26th day of October, 1944, the date upon which the summons and complaint were filed in the Second Judicial District Court, County of Washoe, State of Nevada. I have been advised that only a six weeks period of residence is necessary in the State of Nevada for the purpose of giving jurisdiction to the Court in a matrimonial action. I am informed and verily believe that defendant did not go to the State of Nevada for the purpose of acquiring a bona fide domicile in the State of Nevada, and that his stay there is only temporary and solely for the purpose of attempting to confer jurisdiction upon the Courts of the State of Nevada to render a decree of divorce in his favor, against me. It is defendant's intention to leave the State of Nevada upon securing a decree of divorce against me, and that he will marry the said Zella Torin immediately thereafter.

[fol. 51] Although I am convinced of the above stated facts, and that defendant has not established himself in the State of Nevada for the purpose of obtaining a bona fide residence therein, I have been advised that in the event that a decree of divorce shall be obtained by the defendant against me in his action in the State of Nevada, that such decree would be prima facie evidence that the Court in Nevada had jurisdiction of the action and properly granted a decree of divorce therein. In view of such prima facie evidence of the jurisdiction of the Nevada Court, it would be most difficult for me, for the purpose of invalidating such decree, to prove that the defendant's residence in Nevada was not in good faith and was a fraud and a sham. I do not believe that in view of the defendant's obvious attempt to thwart the decree of this Court, that I should be put to the trouble and effort of introducing such evidence. Furthermore, if the defendant be permitted to continue the action for divorce instituted by him against me in Nevada, and secure a decree therein, I will be exposed to the risk that such divorce will be given full faith and credit in the State of New York, in which event, I would be deposed of my status as the wife of defendant and my marital rights, as such wife, would be jeopardized.

Even if such divorce should not be given full faith and credit in New York State, if the defendant should marry the said Zella Torin, or any other person, and issue should result of such marriage, defendant's ability to support me

and my child would be substantially impaired. As was pointed out previously, the defendant has been most irregular in his payment of the amounts due for the support of myself and my son, and at the time that the defendant left New York State for Nevada, he was five weeks behind. [fols. 52-56] Obviously, if such defaults existed at the time when defendant had no other marital obligations, there is reasonable certainty that such defaults would continue with greater frequency and in larger amounts upon the defendant's marriage.

I am financially unable to bear the expense of defending the aforesaid action brought against me in the Second Judicial District Court of the State of Nevada, nor can I bear the expense of employing counsel to represent me in such action. I certainly am in no position to stand the additional expense, necessary in such defense, of traveling to Nevada, bringing witnesses from New York, and necessarily maintaining them while in Reno, Nevada. All witnesses who would testify on my behalf in such action, are residents of the State of New York, which always has been the domicile of both the defendant and myself.

That the reason that an order to show cause is prayed for herein is, that defendant has instituted the aforesaid divorce action in the State of Nevada and will continue with the prosecution thereof and the service of process upon me, unless restrained by this Court.

Wherefore, I respectfully pray for the annexed order to show cause and the injunctive relief therein requested, for which no previous application has been made.

Helene Kreiger.

Sworn to before me this 4th day of November, 1944,  
Celia Kessler, Notary Public.

Kings Co. Clks. No. 534 Reg. No. 221-K-5  
N. Y. Co. Clks, No. 501 Reg. No. 314-K-5  
Commission Expires March 30, 1945

[fol. 57]

**EXHIBIT "B" TO AFFIDAVIT****IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK****HELENE KREIGER, Plaintiff,****against****LOUIS KREIGER, Defendant.****Findings of Fact and Conclusions of Law**

The above entitled action having been duly brought on for trial at a trial in Special Term, Part IV of the Supreme Court in the City and State of New York, County of New York, before Mr. Justice Samuel I. Rosenman, without a Jury, on the 23rd and 24th days of September, 1940, and both of the parties hereto having been represented by counsel, George J. Beldock, Esq.; by Albert G. McCarthy, Jr., Esq. and Jacob L. Warkow, Esq., appearing for the plaintiff, and Louis Weber Esq., appearing for the defendant; and the allegations and evidence of the parties having been heard, and due deliberation having been had, I do decide and find as follows:

**FINDINGS OF FACT**

**As to the First Cause of Action to Set Aside the Separation Agreement**

1. That the parties hereto were duly married on the 19th day of February, 1933, in the City of Yonkers, State of New York.

[fol. 58] 2. That the plaintiff and defendant were, at the time of the commencement of this action, both residents of the County, City and State of New York.

3. That the issue of the marriage is a male child, named Miles, born on the 28th day of March, 1934.

4. That on or about the 9th day of September, 1935, plaintiff was induced to, and did, enter into an agreement of separation with the defendant, which provided for payment of \$35 per week for the support of the plaintiff and the issue of the marriage. A copy of the aforementioned agreement is annexed to the complaint herein.

5. That the defendant has duly performed all the terms of the said separation agreement on his part to be per-

formed and paid the sum of \$35.00 per week from the date of the making of the said agreement to this date.

6. That the plaintiff accepted the sum of \$35.00 per week, in accordance with the terms of the separation agreement, without protest, from the date of the agreement, September 9, 1935, to the date of the commencement of this action, October 5, 1937.

7. That prior to, and at the time of, the execution of the agreement, defendant's true earnings and true extent of his means and value of his assets were concealed from the plaintiff.

8. That the provision made in the agreement for the support and maintenance of the plaintiff and the issue of the marriage is inequitable and unconscionable and grossly inadequate to provide the plaintiff and the issue of the marriage with the support and maintenance to which they are entitled in accordance with the defendant's means and station in life.

[fol. 59] 9. That, under the opinion herein, the allowance in the separation agreement for the plaintiff and the issue of the marriage is grossly inadequate.

10. That the monies paid to the plaintiff by virtue of the agreement of separation have necessarily been expended by her in the support and maintenance of herself and the issue of the marriage, and she is unable to restore the sums received from the defendant to him.

#### As to the Second Cause of Action for a Separation

11. That the parties hereto were duly married on the 19th day of February, 1933, in the City of Yonkers, State of New York.

12. That the plaintiff and defendant were, at the time of the commencement of this action, both residents of the County, City and State of New York.

13. That the issue of the marriage is a male child, namely Miles, born on the 28th day of March, 1934.

14. That on the 9th day of August, 1935, the defendant wrongfully and without just cause abandoned and deserted the plaintiff and the issue of their marriage.

15. That, under the opinion herein, the defendant herein abandoned the plaintiff herein.

16. That the defendant has refused and neglected to suitably support and maintain the plaintiff and said issue



of the marriage, in accordance with the defendant's means and station in life.

17. That the abandonment by the defendant of the plaintiff occurred without the consent of the plaintiff.

18. That the circumstances of the parties are such that the plaintiff should have the sum of \$60 per week paid to her by the defendant for the support and maintenance of herself and the issue of the marriage.

[fol. 60] 19. That the plaintiff is entitled to payment of alimony in the sum of \$60 per week from October 13, 1940.

20. That a reference is directed before Hon. David L. Weil, Official Referee, to take testimony and report on the amount of alimony to be paid by this defendant to the plaintiff and that the \$60 per week hereinbefore provided shall be paid pending the making of such report and the confirmation thereof.

#### CONCLUSIONS OF LAW

##### As to the First Cause of Action to Set Aside the Separation Agreement

1. That the plaintiff is entitled to a judgment cancelling and setting aside the separation agreement entered into with the defendant, by reason of the concealment by the defendant of the true extent and value of his assets and the gross inadequacy of the allowance paid to the plaintiff for herself and the issue of the marriage.

##### As to the Second Cause of Action for a Separation

2. That the plaintiff is entitled to a judgment against the defendant granting to her a separation from the bed and board of the defendant forever on the grounds that the defendant has wilfully, wrongfully and without just cause abandoned the plaintiff and failed and refused to support the plaintiff and the issue of their marriage, in accordance with his means and station in life.

3. That the defendant is directed to pay to the plaintiff the sum of \$60 per week for the support and maintenance of the plaintiff and the issue of their marriage commencing [fol. 61] with the 21st day of October, 1940, and until the further order of this Court.

4. That the alimony hereinbefore provided to be paid by the defendant shall be paid pending the report of Hon.

David L. Weil, Official Referee, on the amount of alimony to be paid to the plaintiff.

5. That the custody of the issue of the marriage is awarded to the plaintiff herein with the following limitations and exceptions: That the defendant shall have the said child with him on Saturdays of each and every week between the hours of 2 P. M. and 6 P. M., and on Sundays from 9 A. M. to 6 P. M.; That the defendant shall have the right to have the said child with him over night every other week, commencing on Saturday at 2 P. M., and return him to the plaintiff on Sunday at 6 P. M.; that the defendant shall have the child with him during the month of July or August of each and every year; that during the time that the child shall be with the defendant, defendant shall provide all proper and reasonable facilities for the health and welfare of the child.

6. The bank account now outstanding in the Greenwich Savings Bank in the name of the plaintiff in trust for the issue of the marriage, in the sum of \$2,017.14, plus accrued interest, shall be continued in trust for the child in the said account, to be used solely for the education of the said issue of the marriage from the time that he commences attendance at college or, if he does not attend college, until he reaches his majority, the funds to be withdrawn prior to the infant's reaching his majority only upon the written consent of the defendant or permission of this Court:

7. Plaintiff, Helene Kreiger, is hereby awarded a bill [fol. 62] of costs against the defendant, Louis Kreiger, to be taxed, and plaintiff shall have execution therefor.

Let Judgment Be Entered Accordingly.

Dated, New York, the 9th day of December, 1940.

(Sgnd.) Samuel I. Rosenman, J. S. C.

## EXHIBIT "C" TO AFFIDAVIT

At a Special Term Part I. of the Supreme Court of the State of New York, held in and for the County of N. Y. at the County Courthouse in said County on Dec. 9, 1940.

Present: Hon. Samuel I. Rosenman, Justice.

HELENE KREIGER, Plaintiff,

against

LOUIS KREIGER, Defendant

## JUDGMENT

The above entitled action, having duly come on to be tried in its regular order before the Court, at Special Term, Part IV, in the County and State of New York, on the 23rd and 24th days of September, 1940, and upon the said trial, [fol. 63] the parties hereto appeared with their attorneys, and the plaintiff herein presented proof in support of her causes of action herein, and the defendant herein produced proof in support of his defenses therein, and the Court having heard all of the evidence on the part of both parties hereto, and after due deliberation, the Court having made its Findings of Facts and Conclusions of Law,

Now, on motion of George J. Beldock, the attorney for the plaintiff, it is

Ordered, adjudged and decreed that the separation agreement entered into on the 5th day of September, 1935, between the plaintiff and defendant herein be, and the same hereby is, cancelled, vacated and set aside, by reason of the concealment by the defendant of the true extent and value of his assets and the gross inadequacy of the allowance paid to the plaintiff for herself and the issue of the marriage, and it is further

Ordered, adjudged and decreed that this plaintiff be separated from the bed and board of the defendant forever by reason of the wrongful abandonment of the plaintiff by the defendant and his failure and refusal to support the plaintiff and the issue of their marriage in accordance with his means and station in life, and it is further

Ordered, adjudged and decreed that this defendant pay to this plaintiff, at the office of George J. Beldock, Esq., 205 West 34th Street, New York, New York, attorney for the plaintiff, the sum of Sixty (\$60.00) Dollars per week for the support and maintenance of this plaintiff and the issue

of the marriage, which said sum is to be paid on Monday of [fol. 64] each week hereafter and is to be computed from Monday, October 21st, 1940, and said computed sum, together with the weekly payment to be paid by defendant immediately after the service upon him of a certified copy of this judgment, is to be paid to the plaintiff, and it is further

Ordered, adjudged and decreed that the custody of the issue of the marriage is awarded to the plaintiff herein with the following limitations and exceptions: That the defendant shall have the said child with him on Saturdays of each and every week between the hours of 2 P.M. and 6 P.M., and on Sundays from 9 A.M. to 6 P.M., that the defendant shall have the right to have the said child with him overnight every other week, commencing on Saturday at 2 P.M., and return him to the plaintiff on Sunday at 6 P.M.; that the defendant shall have the child with him during the month of July or August of each and every year; that during the time that the child shall be with the defendant, defendant shall provide all proper and reasonable facilities for the health and welfare of the child, and it is further

Ordered, adjudged and decreed that the bank account now outstanding in the Greenwich Savings Bank in the name of the plaintiff in trust for the issue of the marriage, in the sum of \$2,017.14, plus accrued interest, shall be continued in trust for the child in the said account, to be used solely for the education of the said issue of the marriage from the time that he commences attendance at college or, if he does not attend college, until he reaches his majority, the funds to be withdrawn prior to the infant's reaching his majority only upon written consent of the defendant or permission of this Court, and it is further

[fols. 65-66] Ordered, adjudged and decreed that this plaintiff be, and she hereby is, awarded a full bill of costs against this defendant to be taxed by the Clerk of this Court, and that she have execution therefor, and it is further

Ordered, adjudged and decreed that testimony be taken before Hon. David L. Weil, Official Referee, and that he make report upon the amount of alimony to be paid by this defendant to the plaintiff, and that the Sixty (\$60) Dollars per week alimony hereinbefore ordered shall be paid pending the making of such report and the confirmation thereof.

Enter.

S. I. R., J. S. C.

Archibald R. Watson, Clerk.



[fol. 67] IN SUPREME COURT OF NEW YORK, COUNTY OF  
NEW YORK

HELENE KREIGER, Plaintiff,

against

LOUIS KREIGER, Defendant

COMPLAINT

Plaintiff, by Beldock & Meadow, her attorneys, for her complaint herein, respectfully alleges:

First: That the plaintiff and defendant were married on the 19th day of February, 1933, in the City of Yonkers, State of New York.

Second: That at all times hereinafter mentioned, plaintiff was and still is a resident of the City and State of New York.

Third: That at all times hereinafter mentioned, defendant was domiciled in and a resident of the City and State of New York.

Fourth: That the issue of said marriage is a male child named Miles, born on the 28th day of March, 1934.

Fifth: That immediately after the marriage, plaintiff and defendant resided in the City and State of New York, as husband and wife, until in or about the month of August, 1935, when the defendant abandoned the plaintiff and refused to live with plaintiff or their child.

Sixth: That on or about the 9th day of September, 1935, by reason of the concealment by the defendant of the true [fol. 68] extent and value of his assets, the plaintiff was induced to enter into a separation agreement wherein and whereby, among other things plaintiff agreed to accept the sum of \$35.00 weekly from the defendant for the support and maintenance of herself and their infant child.

Seventh: That thereafter, and in or about August, 1937, when plaintiff ascertained the true nature and extent of defendant's assets, income and property, plaintiff commenced an action against the defendant to cancel and set aside the aforesaid separation agreement and for a legal separation, by reason of the abandonment on the part of the defendant.

Eighth: That said action came on for trial to be heard before Hon. Samuel I. Rosenman, one of the Justices of the Supreme Court of the State of New York, County of New

York, on the 23rd and 24 days of September, 1940, and a full and complete trial of the issues was had:

Ninth: Thereafter and on or about the 21st day of October, 1940, the Hon. Samuel I. Rosenman rendered his decision granting full judgment in favor of the plaintiff, cancelling and setting aside, the aforesaid separation agreement by reason of the concealment by the defendant of the true extent and value of his assets and the gross inadequacy of the allowance in said separation agreement, for the plaintiff and the issue of the marriage, and further awarding a separation to plaintiff on the ground of abandonment.

Tenth: That thereafter, an- on or about the 9th day of December, 1940, findings of fact, conclusions of law and interlocutory judgment were signed and entered by the Hon. Samuel I. Rosenman, which adjudged that the aforesaid separation agreement be cancelled and set aside and that [fol. 69] plaintiff be granted a separation by reason of the abandonment on the part of the defendant and that defendant pay the sum of \$60.00 weekly for the support and maintenance of the plaintiff and the infant issue of the marriage, pending a report thereon by an Official Referee. That the provision for the payment of \$60.00 weekly was thereafter made permanent.

Eleventh: That the defendant thereafter appealed to the Appellate Division of the Supreme Court, First Department, from the judgment entered against him aforesaid, and that thereafter said judgment was unanimously affirmed by the said Appellate Division.

Twelfth: That in or about and during the years 1943 and 1944, defendant, through divers persons, requested that plaintiff consent to a divorce in a jurisdiction outside of the State of New York; that if plaintiff would so consent, the defendant would make it worth plaintiff's while financially; that defendant further stated that if plaintiff did not consent to a divorce, defendant would leave the State of New York and would obtain a divorce in the States of Nevada or Florida, without plaintiff's consent, and would cease paying plaintiff for her support, and would only make provision for the infant issue of the marriage.

Thirteenth: That plaintiff has refused and rejected all such proposals for a divorce.

Fourteenth: That prior to the 28th day of August, 1944, and thereafter, defendant made irregular payments of the weekly sums due to plaintiff under the aforementioned de-

creed of separation and would make such payments only after continued threats of legal proceedings.

Fifteenth: That heretofore and on or about the 28th day of August, 1944, the defendant left the City and State of [fol. 70] New York and went by automobile to the State of Nevada.

Sixteenth: That defendant is now in the City of Reno, State of Nevada.

Seventeenth: That defendant's purpose in going to Reno, Nevada, was solely to procure a divorce against this plaintiff and not to acquire a bona fide domicile in the State of Nevada.

Eighteenth: That on or about the 26th day of October, 1944, this defendant commenced an action in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, as plaintiff, against this plaintiff, as defendant, for absolute divorce, on the ground that plaintiff and defendant have lived separate and apart for three consecutive years immediately preceding the commencement of this action, without cohabitation.

Nineteenth: That defendant, in said action in the State of Nevada, alleged that plaintiff is a fit and proper person to have the custody of the infant issue of the marriage, although custody of such infant issue has been granted to this plaintiff by the aforesaid decree of separation in the State of New York.

Twentieth: That on or about the 30th day of October, 1944, plaintiff herein received by mail a copy of the summons and complaint in the action in the State of Nevada aforesaid, and plaintiff believes an attempt to effect personal service thereof upon plaintiff herein will be made on behalf of the defendant.

Twenty-First: Upon information and belief, defendant herein was in the City of Reno, Nevada, for a period of only slightly more than six weeks prior to the 26th day of October, 1944, the date upon which said summons and complaint [fol. 71] were filed in the Office of the Clerk of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe.

Twenty-Second: That on the said 26th day of October, 1944, and for many years prior thereto defendant was and still is a resident of the State of New York, and the domicile of the plaintiff and defendant was and still is the State of

New York, and defendant is only temporarily staying in the City of Reno, State of Nevada.

Twenty-Third: That defendant failed to acquire a bona fide domicile in the State of Nevada and his stay there is only temporary and solely for the purpose of attempting to confer jurisdiction upon the Courts of the State of Nevada to render a decree of divorce in defendant's favor, against this plaintiff.

Twenty-Fourth: Upon information and belief, that it is defendant's intention to leave the State of Nevada upon securing a decree of divorce against plaintiff, and not to continue to maintain a residence or be domiciled therein.

Twenty-Fifth: Upon information and belief, that defendant intends to marry one Zella Torin upon his securing a decree of divorce against plaintiff herein.

Twenty-Sixth: Upon the information and belief, that under the laws of the State of Nevada, a defendant has thirty days to answer after a summons and complaint in an action for divorce has been served; that upon default in answering, a decree of divorce by default may be entered on the 31st day after the service of the summons and complaint in such action.

Twenty-Seventh: That plaintiff herein is financially unable to bear the expense of defending the action brought [fol. 72] against her in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, nor can plaintiff bear the expense of employing counsel to represent plaintiff in said action; nor is plaintiff in a position to stand the additional expense, necessary in such defense, in traveling to Nevada, bringing witnesses from New York, and necessarily maintaining them while in Reno, Nevada.

Twenty-Eighth: All witnesses who would testify on behalf of plaintiff in such action, are residents of the State of New York, which has always been the domicile of both the plaintiff and defendant.

Twenty-Ninth: Upon information and belief, that if defendant be permitted to continue the action for divorce, instituted by him against this plaintiff in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, and to effect service upon this plaintiff and secure a decree of absolute divorce in the aforesaid jurisdiction, this plaintiff will be exposed to the risk that such divorce may be given full faith and credit in the State



of New York, in which event, this plaintiff would be deposed of her station as the wife of defendant, and may be deprived of her property rights, as such wife. Even if such divorce should not be given full faith and credit in the State of New York, if this defendant should marry the said Zella Torin, or any other person, and issue should result of such marriage, defendant's ability to support plaintiff and their infant child would be substantially impaired.

Thirtieth: That plaintiff will, therefore, be irreparably damaged and will be deprived of her rights as the wife of the defendant, without due process of law, if defendant be permitted to prosecute said action in the Second Judicial [fol. 73] District Court of the State of Nevada, in and for the County of Washoe, or to prosecute any action for divorce or separation in any State, territory or dependency of the United States or any foreign country, except the State of New York.

Thirty-First: That plaintiff has no adequate remedy at law.

Wherefore, plaintiff demands a decree and judgment against defendant adjudging

1. That the defendant, Louis Kreiger, his agents, attorneys, solicitors, counsel, representatives and each and all of them, and all persons acting by, under, through or in concert or in privity with him, or any of them, be forever and pendente lite enjoined and restrained

(a) from prosecuting, going forward, seeking to serve plaintiff with legal process, personally or by publication or otherwise, or taking testimony in, or taking any further steps, or procuring any act to be taken or done, or in attempting to secure or securing any judgment, decree or relief of divorce in furtherance of the complaint in the action for absolute divorce, commenced or attempted to be commenced by defendant herein, as plaintiff, and against plaintiff herein, as defendant, in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe;

(b) from commencing, instituting, prosecuting, bringing or proceeding with any action for divorce or separation against plaintiff in any State of the United States or in any territory or dependency thereof,

or in any foreign country, except in the State of New York.

[fol. 74] 2. That defendant, Louis Kreiger, be permanently and pendente lite enjoined and restrained from contracting or entering into marriage with a person other than this plaintiff, until the further order of this Court.

3. That plaintiff have such other and further relief as to this Court may seem just and proper.

4. That plaintiff be awarded the costs and disbursements of this action.

Beldock & Meadow, Attorneys for plaintiff, Office  
and Post Office Address, 205 West 34th Street,  
Borough of Manhattan, City of New York.

STATE OF NEW YORK,  
City of New York,  
County of New York—ss.:

HELENE KREIGER, being duly sworn, deposes and says: That she is the plaintiff in the within action; that she has read the foregoing complaint and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes it to be true.

Helene Kreiger.

Sworn to before me this 4th day of November, 1944.  
Celia Kessler, Notary Public. Kings Co. Clks. No.  
534, Reg. No. 221-K-5. N. Y. Co. Clks. No. 501  
Reg. No. 314-K-5. Commission Expires March 30,  
1945.

[fol. 75] At a Special Term, Part 3 of the Supreme Court of the State of New York, held in and for the County of New York, at the court-house, Pearl and Centre Streets, Borough of Manhattan, City of New York, on the 27th day of November, 1944.

Present: Hon. Kenneth O'Brien, Justice.

HELENE KREIGER, Plaintiff,

against

LOUIS KREIGER, Defendant

#### ORDER GRANTING RESTRAINING ORDER

A motion having regularly come on to be heard before me on the 24th day of November, 1944, for an order enjoining pendente lite from taking any further steps to secure a decree of divorce in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, and for other relief therein requested,

Now, upon reading and filing the order to show cause dated November 9, 1944, and issued by Hon. Lloyd Church, one of the Justices of this court, and upon reading and filing the affidavit of Helene Kreiger, duly sworn to the 4th day of November, 1944, and the summons and complaint herein, duly verified the 4th day of November, 1944, and the alias summons and complaint on the action entitled "Louis Kreiger, plaintiff against Helene A. Kreiger, defendant," in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, marked "Exhibit A," [fol. 76] and the findings of fact and conclusions of law in the action, entitled "Helene Kreiger, plaintiff, against Louis Kreiger, defendant," in the Supreme Court of the State of New York, County of New York, marked "Exhibit B," and the judgment in said action in this court entitled "Helene Kreiger, plaintiff against Louis Kreiger, defendant," duly entered on the 9th day of December, 1940, marked "Exhibit C," and upon due proof of service upon defendant, Louis Kreiger, of said order to show cause and the papers upon which it was issued, together with a copy of the bond filed by plaintiff herein in the sum of \$250.00, all submitted in support of said motion, and after hearing Beldock & Meadow, Esqs., attorneys for plaintiff, by Mordecai M. Richter, Esq., of counsel in support of said motion,

and no one appearing in opposition thereto, and due deliberation having been had thereon, it is

Now, on motion of Beldock & Meadow, attorneys for Plaintiff,

Ordered, that said motion be and the same hereby is in all respects granted, and it is further

Ordered, that pending the trial and determination of this action, the defendant, Louis Kreiger, his agents, attorneys, solicitors, counsel, representatives and each and all of them, and all persons acting by, under, through or in concert or in privity be and they hereby are enjoined and restrained from prosecuting, going forward, seeking to serve plaintiff with legal process, personally or by publication or otherwise, or taking testimony in or taking any further steps or procuring any act to be taken or done, or in attempting to secure or securing any judgment, decree or relief of divorce in furtherance of the complaint in this action for absolute [fols. 77-78] divorce, commenced or attempted to be commenced by defendant herein, as plaintiff, and against plaintiff herein, as defendant, in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, or in any state of the United States or in any territory or dependency of the United States or any foreign country, except in the State of New York, and it is further

Ordered, that pending the trial and determination of this action, the defendant, Louis Kreiger, be and he hereby is enjoined and restrained from contracting or entering into marriage with any person other than the plaintiff herein.

Enter

K. O'B., J. S. C.



[fol. 79]

No. 85975. Dept. No. 2

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF WASHOE,

LOUIS KREIGER, Plaintiff,

v.

HELENE A. KREIGER, Defendant

**Transcript of Testimony**

Be It Remembered that the above entitled action came on regularly for trial in Department No. 2 of said Court on Tuesday, the 12th day of December, A. D. 1944, at the hour of 11 o'clock A. M. of said day, before Hon. A. J. Maestretti, Judge of said Court, sitting without a jury.

The plaintiff was present in person and represented by his attorneys, Thatcher & Woodburn, by William Wood- [fol. 80] burn of said firm. The defendant did not appear or answer and her default was entered.

J. Lozano, official reporter of said court, was present and acting as such, and thereupon the following proceedings were had and testimony taken, to-wit.

Mr. Woodburn: The plaintiff is ready, your Honor.

The Court: You may enter the default of the defendant for failure to answer within the time required by law. You may proceed.

MRS. RUTH POWERS SWORN for the Plaintiff.

Mr. Woodburn:

Q. State your name.

A. Mrs. Ruth Powers.

Q. Where do you reside?

A. In Greenfield Acres.

Q. How long have you lived in Nevada?

A. I maintained residence here at my house ever since last March and I have lived in Nevada for two years.

Q. How long have you owned your home or lived in Greenfield Acres?

A. That is what I mean, have had my home in Greenfield Acres since last March but have lived in Reno for two solid years.

Q. Since March, 1944 you have lived in Greenfield Acres?

A. Yes.

Q. Are you acquainted with Louis Kreiger, the plaintiff?

A. I am.

Q. When did you first meet him?

A. On September 13th.

Q. Of what year?

A. 1944.

Q. Do you recall the circumstances under which you met him?

A. I do. He purchased a home next to mine and I helped him move in.

Q. Since that date how often have you seen him in [fol. 81] Washoe County, Nevada?

A. Every day . . . with the exception of perhaps two or three days.

Q. Your house is immediately adjoining his? The one he has in town?

A. There is one house between.

Q. Have you visited him in his home?

A. Many times.

Q. Has he visited your home?

A. Yes, he has.

The Court: That is all, you may be excused.

---

CHARLES I. CROSBY sworn for Plaintiff.

Mr. Woodburn:

Q. State your name.

A. Charles I. Crosby.

Q. What is your business?

A. Real Estate and insurance.

Q. Where do you live?

A. I live in Greenfield Acres.

Q. What County?

A. Washoe County, Nevada.

Q. How long have you lived in Washoe County?

A. Since 1936.

Q. Are you acquainted with Louis Kreiger, the plaintiff?

A. Yes, I am, very well.

Q. Do you recognize him as being in the Court room?

A. I do.

Q. When did you first meet him?

A. I met Mr. Kreig. September 13 of this year.

Q. Was there any business transaction on that occasion?

A. Yes, there was. I sold him his present residence.

Q. Where is that residence?

A. It is located in Greenfield Acres, Washoe County, Nevada.

Q. What was the purchase price?

A. \$15,000.00.

Q. Do you know whether or not he moved into that residence at Greenfield Acres?

A. When the deal was closed.

Q. Was the house furnished at that time?

A. He had it furnished when he took possession.

[fol. 82] Q. Do you know whether or not he had his own furniture?

A. He did not have his own furniture at the time, the furniture was moved out but sent for his furniture to be moved into his home, that is his own furniture.

Q. Do you know if he had his own furniture moved into that house?

A. Very positively.

Q. How often have you seen him in Washoe County since September 13, 1944?

A. Every day Lou and I have had two or three talks together.

Q. By Lou you mean the plaintiff?

A. Yes.

Q. Have you visited at his home?

A. Yes, many times.

Q. You and Mrs. Crosby?

A. That's right.

The Court: That is all, you may be excused.  
Plaintiff sworn for himself.

Mr. Woodburn:

Q. State your name, Mr. Kreiger.

A. Louis Kreiger.

Q. Where do you reside, Mr. Kreiger?

A. Greenfield Acres, Washoe County, Nevada.

Q. Are you the plaintiff?

A. Yes.

Q. What is the name of the defendant?

A. Helene A. Kreiger.

Q. Do you reside in Washoe County, Nevada?

A. Yes.

Q. Since what date?

A. Since September 13, 1944.

Q. And you came to Washoe County with the intention of making it your home and your residence permanently?

A. Yes.

Q. Has such been your intention from that time to live in Nevada?

A. Yes.

Q. And it is now?

A. Yes.

[fol. 83] Q. Where did you live prior to coming to Nevada?

A. At New York City.

Q. What had been your business in that city?

A. Manufacturing of Mink goods.

Q. How long had it been since you have worked in that business?

A. Since the end of 1941.

Q. Whereabouts in New York City did you live?

A. 22 Riverside Drive.

Q. Is that a dwelling house or an apartment house?

A. An apartment house.

Q. Did you have a lease on that apartment?

A. Yes.

Q. When did you leave New York City?

A. August 28th.

Q. Of what year?

A. 1944.

Q. What did you do with this lease which you had upon those premises?

A. I notified Wood-Olson that I was moving from my apartment and paid them a half month's rent before the termination of the lease.

Q. Was that apartment furnished?

A. No, sir. I had my own furniture.

Q. Your own furniture was in that apartment?

A. Yes.

Q. What did you do with that furniture?

A. Had it shipped to Reno.

Q. And was it shipped to Reno?

A. Yes, it was shipped by the Lexington Moving Company of New York City.



Q. Did you have a telephone in that residence there in New York City prior to coming to Nevada?

A. Yes.

Q. And did you have it taken out?

A. I had the telephone disconnected.

Q. Did you prior to coming to the State of Nevada in September of 1944 completely sever any business association and other relation in the State of New York?

A. Yes.

[fol. 84] Q. When did you arrive in Reno?

A. About September 12th.

Q. Did you purchase a home in Washoe County, Nevada?

A. Yes.

Q. From whom did you purchase that property?

A. From Charles Crosby.

Q. Where is that property?

A. At Greenfield Acres, Box 259.

Q. What was the purchase price?

A. \$15,000.00.

Q. State whether that house is furnished at this time?

A. Yes, it is furnished.

Q. With what furniture?

A. With my own furniture.

Q. Where did that furniture come from?

A. From New York City.

Q. Are you at the present time engaged in any business?

A. None at this time.

Q. What are your intentions or plans, if any, as to your business for the future?

A. My plans for the future is mink ranching.

Q. Where do you propose conducting that business?

A. In Washoe County, Nevada.

Q. At what place?

A. My own place.

Q. Is that place suitable for the raising of mink?

A. Yes.

Q. Did you have that in mind when you purchased that property?

A. Yes.

Q. Have you been actually and physically present in the State of Nevada each and every day since September 13, 1944?

A. Yes, with the exception of a trip which I made of a week to Washington, D. C.

Q. What was the purpose of that trip?

A. Call it a tax problem.

Q. How long were you gone from the State of Nevada?

A. Only a week.

Q. When you left on that occasion for the purpose mentioned was it your intention to return to Nevada just as soon as that business was completed?

A. Yes.

[fol. 85] Q. Do you have a bank account in the State of Nevada?

A. Yes.

Q. Whereabouts?

A. At the First National Bank, 1st and Virginia Branch.

Q. Is that a commercial account?

A. Yes.

Q. State whether or not you have a safe deposit box?

A. Yes.

Q. Have you a brokerage account?

A. Yes.

Q. With what company?

A. J. A. Hogle & Company of Reno, Nevada.

Q. Have you any property real or personal in the State of New York?

A. None at this time.

Q. Where is all your property?

A. Here in Washoe County, Reno.

Q. Have you any securities?

A. Yes.

Q. Where are they?

A. With J. A. Hogle & Company.

Q. Have you any securities or other valuables in that safe deposit box?

A. Yes.

Q. In other words, everything that you own is in the State of Nevada, is that true?

A. Yes.

Q. Are you a member of any lodge or any fraternal organization?

A. Yes.

Q. Please state what organization.

A. Well, I am a member of the order of Free and Accepted Masons, that is number 853 of the Free and Accepted Masons and I notified the secretary of the Lodge of my in-

tention to move. A member to be transferred must be a resident in this State for not less than six months.

Q. Was it your present intention to demit and transfer from the New York Lodge to a Nevada Lodge just as soon as you are qualified to do so?

A. Yes.

Q. Since your arrival in Nevada have you any knowledge that your wife has commenced an action against you in the State of New York?

A. Yes.

Q. Were you personally served with any restraining [fol. 86] orders against the prosecution by you of this action?

A. Yes.

Q. Where were you served?

A. At my home.

Q. In what State?

A. In Nevada, Washoe County.

Q. Was any personal service made upon you of any restraining order in the State of New York?

A. No.

Q. In that action which your wife brought against you in New York for a restraining order, have you entered an appearance in that action there personally or through an attorney?

A. No.

Mr. Woodburn: I desire to offer in evidence these various restraining orders.

The Court: You can specify them for the record and they may be admitted in evidence.

Mr. Woodburn: The papers which I am offering in evidence are as follows:

(1) In the case pending in the Supreme Court of the State of New York, County of New York, entitled "Helene Kreiger, Plaintiff against Louis Kreiger, Defendant", Undertaking on Injunction.

(2) In the same case an order that service of a copy of the order to show cause be deemed good and sufficient service.

(3) In the same action, the affidavit of Helene Kreiger, the Plaintiff therein, in support of her prayer for injunctive relief.

(4) There is attached to said affidavit, and marked Exhibit "A", the summons and complaint in the pending Nevada action. There is also attached as exhibit the Findings of Fact and Conclusions of Law in an action to set aside the separation agreement.

(5) Attached as an exhibit is a judgment under date of [fol. 87] December 9, 1940 requiring the plaintiff herein in said New York action to pay the defendant herein the sum of Sixty Dollars per week as alimony.

(6) Complaint of Helene Kreiger, in said action, by her attorneys Beldock & Meadow, praying that Louis Kreiger, the plaintiff herein, be enjoined and restrained from prosecuting this action and that he be restrained from contracting or entering into marriage with a person other than the plaintiff.

(7) Order of Justice Kenneth O'Brien granting said restraining order.

Q. Since coming to Nevada have you signed a will in this State?

A. Yes.

Q. Before Nevada residents as witnesses?

A. Yes.

Q. State whether or not in that Will that you directed that your estate be probated in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe?

A. Yes.

Q. Is it your firm intention to make Nevada your home and residence permanently?

A. Yes.

Q. Has such been your intention ever since you came to Nevada on September 13, 1944?

A. That's right.

Q. Is the defendant your wife?

A. Yes.

Q. When did you marry her?

A. February 18, 1933.

Q. In what city and state?

A. In the city of Yonkers in the State of New York.

Q. You allege in your complaint that for more than three years immediately preceding the institution of this action that you and the defendant have lived separate and apart for more than three consecutive years. Is that true?



A. Yes.

Q. When did you and your wife actually separate?

A. We actually separated in the month of August of 1935 [fols. 88-92] and then later there was a separation agreement drawn up by my attorney and her attorney which was dated September 9, 1935.

Q. Did you agree to live separate and apart by mutual consent?

A. Yes.

Q. Since that separation in August of 1935 has there been any cohabitation between you and the defendant?

A. None.

Q. Do you regard yourself as a fit and proper person to have the custody of your minor child?

A. I certainly do.

Q. Are you able to maintain and support that child?

A. Yes.

Q. Do you believe it would be proper that the mother be allowed to visit the child at reasonable times and see him?

A. Yes.

Q. In the event of a decree being granted in this case, do you consent that the Court enter an order to that effect?

A. Yes.

The Court: Decree to plaintiff on ground of three years separation, minor to plaintiff; that defendant may visit at reasonable and proper times. Court reserves authority to change custody of minor child.

September 27, 1945.

James D. Finch.

[fol. 93]

EXHIBIT 2

[fol. 94]

No. 508

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE  
DISTRICT OF NEVADAFiled Nov. 28, 1945. Amos P. Dickey, Clerk. By O. F.  
Pratt, Deputy.

HELENE KREIGER, Plaintiff,

v.

LOUIS KREIGER, Defendant

## COMPLAINT

1. The plaintiff is a citizen of the State of New York, and at all times and dates herein mentioned has had her actual domicile in the City of New York, State of New York.

2. Defendant is a citizen of the State of Nevada, residing at Reno, Washoe County, State of Nevada.

[fol. 95] 3. That the matter in controversy, exclusive of interest and costs, exceeds the sum of Three Thousand Sixty (\$3,060) Dollars.

4. That heretofore and on or about the 5th day of October, 1937, the plaintiff duly commenced an action in the Supreme Court of the State of New York, County of New York, against the defendant to obtain a judgment of separation from the defendant by reason of the defendant's abandonment and his failure and refusal to support the plaintiff and the issue of the marriage in accordance with defendant's means and station in life.

5. That at all the times and dates herein mentioned, the Supreme Court of the State of New York, in and for the County of New York, was and still is a Court of general jurisdiction duly organized and created by the laws of the State of New York.

6. That said action was commenced by the service of the summons and complaint upon the defendant personally within the State of New York.

7. That on December 9, 1940, after trial, the Supreme Court of the state of New York, County of New York, awarded a judgment of separation on the merits in favor of the plaintiff and against the defendant by reason of the abandonment of the plaintiff by the defendant and his fail-

ure and refusal to support the plaintiff and the issue of the marriage in accordance with his means and station in life.

8. That the aforesaid judgment was filed in the office of the County Clerk of New York County on December 12, 1940.

9. That the said Supreme Court, by the aforesaid judgment, awarded plaintiff herein the sum of \$60 per week, for the support and maintenance of the plaintiff and the issue of the marriage, and ordered the defendant herein to pay the same.

[fols. 96-98] 10. That the judgment rendered as aforesaid still remains in full force and effect and has not been revised, modified or vacated.

11. That commencing December 11, 1944 and continuously thereafter, until the present, the defendant has failed and refused and defaulted in making payments of the Sixty (\$60.00) Dollars per week, as directed by the aforesaid judgment of the Supreme court of the State of New York, County of New York, referred to in paragraphs 7, 8, and 9 herein.

12. That by reason of the defendant's default and his failure and refusal to make the weekly payment of Sixty (\$60.00) Dollars per week, he is presently in arrears, under the terms of the aforesaid judgment, for an aggregate period of fifty-one (51) weeks and that there is presently due and owing to the plaintiff the sum of Three Thousand Sixty (\$3,060) Dollars, exclusive of interest and costs.

13. That the legal rate of interest, by virtue of the laws of the State of New York, on debts and judgments, is six — (6%) per annum.

Wherefore, plaintiff prays judgment against the defendant for the sum of Three Thousand Sixty (3,060) Dollars, together with interest at the rate of 6% per annum on each defaulted weekly payment from the date of each such default, together with the plaintiff's costs and disbursements.

(S.) Albert Hilliard, Attorney for Plaintiff.

(Verified November 26, 1946 by Helene A. Kreiger.)

[fol. 99] Filed Dec. 20, 1945. Amos P. Dickey, Clerk. By O. F. Pratt, Deputy.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE  
DISTRICT OF NEVADA

Civil Action No. 508

HELENE KREIGER, Plaintiff,

vs.

LOUIS KREIGER, Defendant

ANSWER

Comes now the defendant above named and answering the complaint on file herein, admits, denies and alleges as follows:

I

Answering paragraph 1 of plaintiff's complaint defendant admits the allegations thereof.

II

Answering paragraph 2 of plaintiff's complaint, defendant admits the allegations thereof.

III

Answering paragraph 3 of plaintiff's complaint, defendant denies the allegations thereof.

IV

Answering paragraphs 4, 5, 6, 7 and 8 of plaintiff's complaint, defendant admits the allegations thereof.

[fol. 100]

V

Answering paragraph 9 of plaintiff's complaint, defendant denies that said judgment contains any provisions for the support and maintenance of the plaintiff and the issue of the marriage other than the following:

"Ordered, Adjudged and Decreed that this defendant pay to this plaintiff, at the office of George J. Beldock, Esq., 205 West 34th Street, New York, New York,



attorney for the plaintiff, the sum of Sixty (\$60.00) Dollars per week for the support and maintenance of this plaintiff and the issue of the marriage, which said sum is to be paid on Monday of each week hereafter and is to be computed from Monday, October 21st, 1940, and said computed sum, together with the weekly payment to be paid by defendant immediately after the service upon him of a certified copy of this judgment, is to be paid to the plaintiff, and it is further

Ordered, Adjudged and Decreed that testimony be taken before Hon. David L. Weil, Official Referee, and that he make report upon the amount of alimony to be paid by this defendant to the plaintiff, and that the Sixty (\$60.00) Dollars per week alimony hereinbefore ordered shall be paid pending the making of such report and the confirmation thereof."

## VI

Answering paragraph 10 of plaintiff's complaint, defendant denies the allegations therein.

[fol. 101]

## VII

Answering paragraph 11 of plaintiff's complaint, defendant denies all the allegations herein, save and except defendant admits he has not paid to defendant the sum of Sixty (\$60.00) Dollars per week since December 12, 1944, but in that regard alleges that he has tendered to plaintiff since that date, Fifty (\$50.00) Dollars per month for each and every month since December 12, 1944, for the support and maintenance of the issue of the marriage but that said plaintiff has retained said checks and has never cashed the same.

## VIII

Answering paragraph 12 of plaintiff's complaint, defendant denies all the allegations therein.

## IX

Answering paragraph 13 of plaintiff's complaint, defendant has not sufficient knowledge or information to form a

belief as to the matters therein stated and upon that ground denies the same.

For a First, Further and Affirmative Defense, Defendant  
Alleges

I

That the judgment mentioned in plaintiff's complaint in requiring the future payment of Sixty (\$60.00) Dollars per week did not constitute a final judgment for a fixed sum of money which is enforceable or collectible in this action.

For a Second, Further and Affirmative Defense, Defendant  
Alleges

I

That the judgment mentioned in plaintiff's complaint is [fol. 102] and was at all times since the rendering thereof subject to annulment, modification or variance by the court rendering the same and is not a judgment which this court will enforce.

For a Third, Further and Affirmative Defense, Defendant  
Alleges

I

That the requirement in said judgment mentioned in said complaint that defendant pay to plaintiff a sum of Sixty (\$60.00) Dollars per week as therein set forth did not constitute a debt or obligation from the defendant to the plaintiff which can be enforced in this action.

For a Fourth, Further and Affirmative Defense, Defendant  
Alleges

I

That the said judgment mentioned in plaintiff's complaint, insofar as the same requires weekly payments by defendant, cannot be enforced in any other way than according to the procedure prescribed in the statutes of the State of New York, and cannot be enforced in this action.

**For a Fifth, Further and Affirmative Defense, Defendant  
Alleges**

**I**

That the judgment set forth in plaintiff's complaint so far as it relates to any payments required therein to be made by defendant to plaintiff, is not a final judgment entitled to full faith and credit within the State of Nevada by virtue of the provisions of the Constitution of the State of Nevada.

**[fol. 103] For a Sixth, Further and Affirmative Defense,  
Defendant Alleges**

**I**

That the judgment mentioned in plaintiff's complaint, and which is sought to be enforced in this action, is not such a judgment as will be enforced within the State of Nevada by comity.

**For a Seventh, Further and Affirmative Defense, Defendant  
Alleges**

**I**

That defendant herein as now and ever since September 12, 1944, has been a bona fide resident of and domiciled in the County of Washoe, State of Nevada.

**II**

That on the 12th day of December, 1944, in an action then pending between plaintiff and defendant in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, a judgment and decree was duly given, made and entered in said Second Judicial District Court of the State of Nevada, in and for the County of Washoe, in favor of this defendant and against the plaintiff in this action, adjudging that the bonds of matrimony between them were dissolved and that each was forever released from the obligations thereof, a true copy of which judgment and decree is attached hereto, made a part hereof, and marked "Exhibit A".

## III

That by the terms of said decree of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, the defendant herein was required to support, [fols. 104-106] maintain and educate the child, the issue of the marriage of plaintiff and defendant. That the sum of Fifty (\$50.00) Dollars per month, is a reasonable amount for such support and maintenance and education, and defendant herein has provided the plaintiff with said amount of money each and every month since the entry of said decree, but plaintiff herein has refused and still refuses to cash the checks therefor.

## IV

That said judgment of divorce entered by the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, on the 12th day of December, 1944, terminated the relation of husband and wife between plaintiff and defendant herein upon which the judgment in plaintiff's complaint herein is based, and terminated any obligation of defendant herein to make any further payments thereon.

Wherefore, defendant prays that plaintiff be denied any relief upon her complaint on file herein, and that judgment be entered herein for defendant for his costs herein incurred, and for such other and further relief as to the Court seems just and equitable in the premises.

Thatcher, Woodburn & Forman, Geo. B. Thatcher,  
Wm. Woodburn, Wm. J. Forman, Attorneys for  
Defendant. Address: 206 North Virginia Street,  
Reno, Nevada.



[fol. 107] Filed February 19th, 1946. Amos P. Dickey,  
Clerk, by J. P. Fodrin, Deputy.

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA,  
IN AND FOR THE DISTRICT OF NEVADA

Case No. 508

HELENE KREIGER, Plaintiff,

VS.

LOUIS KREIGER, Defendant-

ORDER ON PRE-TRIAL CONFERENCE

Pursuant to the Order heretofore made, the Pre-Trial Conference in the above entitled action was held before the above entitled Court at Reno, Nevada, at Reno, Nevada, at 2:00 p. m. of January 29th, 1946, plaintiff appearing by her attorney, Albert Hilliard, Esq., and defendant appearing by his attorneys, Thatcher, Woodburn & Forman,

It Is Hereby Ordered that the action taken at such Pre-Trial Conference is as follows:

Paragraphs I and II of the Complaint are admitted.

Paragraph III of the Complaint is denied.

As to the Seventh Affirmative Defense: Paragraphs I and II of defendant's Seventh Affirmative Defense are admitted.

Counsel stipulated that all sums required to be paid by the Judgment of Separate Maintenance of the Supreme [fol. 108] Court of New York had been paid from date of rendition of said Judgment to and including the date of the Nevada divorce decree which was December 12th, 1944.

Counsel stipulate that the defendant is now residing in and is a citizen of the State of Nevada.

Counsel stipulate that checks at the rate of \$50.00 a month have been tendered and mailed to plaintiff herein and that return receipts have been received after each mailing and that none of the said checks have been cashed.

It is stipulated that the Judgment of Separate Maintenance contains the following provision: "Ordered, Adjudged and Decreed that testimony be taken before Hon. David L. Weil. Official Referee, and that he make report upon the amount of alimony to be paid by this defendant to the plaintiff, and that the Sixty (\$60) Dollars per week

alimony. heretofore ordered shall be paid pending the making of such report and the confirmation thereof."

It is stipulated that no hearing has ever been had before the referee named in the Judgment of Separate Maintenance; and that no further proceedings have been had under the last paragraph of the New York Judgment of Separate Maintenance.

It is stipulated that the exemplified copy of the New York Judgment of Separate Maintenance filed herein January 29th, 1946, is a true and correct copy of the said New York Judgment; and that Exhibit A attached to the Answer herein as a full true and correct copy of the Nevada decree of divorce referred to in the Answer; and that the said New York Judgment and the said Nevada decree are to be admitted and considered in evidence upon the trial of this action.

[fol. 109] That as to the allegation contained in Paragraph III on page 6 of the Answer herein wherein it is alleged that the sum of \$50.00 per month is a reasonable amount for the support, maintenance and education of the child of the parties, it is stipulated that evidence may be offered by plaintiff and defendant to prove or disprove such allegation.

At the trial the defendant will contend as follows:

1. That the said Nevada decree of divorce is one that must be recognized in New York because the plaintiff named in said decree of divorce, Louis Kreiger, was for the time required by law prior to the rendition of the said decree of divorce and at all times since has been and now is a bona fide resident of the State of Nevada; that said decree terminated the effect of the New York Judgment of Separate Maintenance.

2. That the cause of action here is not one which could be maintained here or in New York for the reason that the said Judgment of Separate Maintenance is not a final judgment for the reason that under the New York law the installments awarded by the Judgment of Separate Maintenance are subject to be annulled, modified or wholly set aside even as to past due installments; therefore, it is not a Judgment which is entitled to full faith and credit under the Constitution and that said Judgment of Separate Maintenance is not a final judgment because under New York law another proceeding would be required before execution could be levied to enforce said Judgment under Section

1171B of the Practice Act of New York. Defendant contends that at a hearing in New York, if such a hearing was held under said Section 1171B, defendant here would be entitled to set up the Nevada decree of divorce and the New [fols. 110-112] York Court could, if it saw fit, annul past installments or modify it by making definite provisions for the support of the child of parties.

3. Defendant will contend that the tender and receipt of checks as alleged in the pleadings constitute payment in the amount of said checks, and that therefore, less than \$3,000.00 is in controversy in this action.

Plaintiff contends as follows:

1. Plaintiff contends that the legality of the Nevada decree is not material to this controversy.

2. That this action is not affected by Section 1171B of the Practice Act of New York and that the alleged past due installments are vested and could be collected in a suit in New York.

3. That it was not necessary that the accrued installments under the New York Judgment for Separate Maintenance be reduced to a judgment before the bringing of this action.

This case will be submitted upon briefs of the respective parties. Plaintiff to file opening brief within thirty (30) days from date hereof, defendant thirty (30) days to file his answering brief, and plaintiff ten (10) days to reply thereto.

In the event the allegation contained in Paragraph III of defendant's Seventh Affirmative Defense, to-wit: "That the sum of \$50.00 per month is a reasonable amount for the support, maintenance and education of the minor child" becomes material in the opinion of the Court to the decision of the case, then the parties shall have the right to offer evidence thereon.

Dated: February 18th, 1946, at Reno, Nevada.

Roger T. Foley, United States District Judge.

60  
[fols. 113-116] IN SUPREME COURT OF NEW YORK, COUNTY OF  
NEW YORK

DECISION OF MR. JUSTICE GAVAGAN

Motion granted. Plaintiff under section 1171-b, C. P. A., is entitled to entry of money judgment for arrears of alimony under decree of separation of this court notwithstanding the default decree of divorce obtained in Nevada by the defendant (Durlacher v. Durlacher, 173 Misc. 329, id., 123 Fed. 2d 70, cert. denied 315 U. S. 805). Section 1171-b specifically provide that the remedy sought therein is in addition to "any and every other remedy to which the wife may be entitled under the law." Plaintiff's application for summary relief is not barred by pending action in the District Court. Plaintiff is entitled to an order directing the entry of judgment for unpaid arrears. Settle order.

[fol. 117] • At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 20th day of December, 1946.

Present: Hon. Francis Martin, Presiding Justice; Hon. Edward J. Glennon, Hon. Albert Cohn, Hon. Joseph M. Callahan, Hon. David W. Peck, Justices.

17100

HELENE KREIGER, Respondent,  
against

: LOUIS KREIGER, Appellant

ORDER OF AFFIRMANCE ON APPEAL FROM JUDGMENT AND ORDER

An appeal having been taken to this Court by the defendant from a judgment of the Supreme Court, New York County, entered on the 23rd day of April, 1946, and from an order made by said Court and entered on the 23rd day of April, 1946, granting plaintiff's motion, pursuant to Section 1171-b of the Civil Practice Act, for an order directing that the plaintiff have a money judgment against the defendant, and said appeal having been argued by Mr. Edward S. Joseph, of counsel for the appellant, and by Mr.



[fol. 118] Charles Rothenberg, of counsel for the respondent; and due deliberation having been had thereon,

It is hereby ordered and adjudged that the judgment and order so appealed from be and the same hereby, — in all things, affirmed; and that the respondent recover of the appellant the costs of this appeal. (Two of the Justices dissent.)

Enter,

F. M.

IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

HELENE KREIGER, Plaintiff,

against

LOUIS KREIGER, Defendant

JUDGMENT OF AFFIRMANCE

The above named defendant, Louis Kreiger, having appealed to the Appellate Division of the Supreme Court, First Department, from the order of the Supreme Court, New York County, entered in the office of the Clerk of the County of New York on the 23rd day of April, 1946, granting plaintiff's motion, made pursuant to Section 1171-b of [fol. 119] the Civil Practice Act, and directing that plaintiff have the money judgment against the defendant in the sum of \$3,960.00, and from the judgment entered thereon in the office of the Clerk of the County of New York on the 23rd day of April, 1946, and the said appeal having come on to be heard before the said Appellate Division and the said Appellate Division having duly made an order, a certified copy of which, with the papers upon which the appeal was heard, was filed on the 20th day of December, 1946, in the office of the Clerk of the County of New York, by which it appears that said Appellate Division has ordered that said order and judgment so appealed from, as aforesaid, be in all things affirmed, with costs, and said costs having been duly taxed,

Now, on motion of Edward S. Joseph, attorney for defendant-appellant herein, it is

Adjudged that the order and judgment entered herein on the 23rd day of April, 1946, be and the same hereby is in all things affirmed;

And it is further adjudged that the said plaintiff, Helene Kreiger, 175 W. 93 St., N. Y. C., recover of the defendant, Louis Kreiger, Box 30, Steamboat Nev. the sum of \$63.00, the amount of her costs herein as taxed, and that she have execution against said plaintiff, Louis Kreiger, therefor.

Judgment signed and entered this 17 day of March, 1947.

Archibald R. Watson, Clerk.

\* [fol. 120] IN SUPREME COURT OF NEW YORK, APPELLATE  
DIVISION—FIRST DEPARTMENT

December, 1946

Francis Martin, P. J., Edward J. Glennon, Albert Cohn,  
Joseph M. Callahan, David W. Peck, JJ.

17100

HELENE KREIGER, Respondent,

vs.

LOUIS KRIEGER, Appellant

Appeal from an order of the Supreme Court, New York County, granting plaintiff's motion, made pursuant to Section 1171-b of the Civil Practice Act, and directing that plaintiff have a money judgment against the defendant in the sum of \$3,960 representing unpaid arrears of alimony accruing under a judgment of separation made herein on December 9, 1940, and from the judgment entered thereon.

Edward S. Joseph for appellant.

Charles Rothenberg of counsel (Moss K. Schenck with him on the brief) for respondent.

Judgment and order affirmed with costs. No opinion.

(Callahan and Peck, JJ. dissent. Dissenting opinion by Callahan, J.)

#### DISSENTING OPINION OF MR. JUSTICE CALLAHAN

[fols. 121-123] CALLAHAN, J. (dissenting):

If the Nevada divorce was valid it terminated the marital relation, and the wife's rights under the separation decree (*Tonjes v. Tonjes*, 14 App. Div. 542; *Richards v. Richards*,

87 Misc. 134, affd. 167 App. Div. 922; *Burton v. Burton*, 150 App. Div. 790; *Scheinwald v. Scheinwald*, 231 App. Div. 757). In the absence of a finding of lack of jurisdiction of the Nevada court to grant the decree of divorce or proof that that judgment was procured by fraud, it was entitled to full faith and credit (*Matter of Holmes*, 291 N. Y. 261).

The order and the judgment entered thereon should be reversed and the motion denied.

[fol. 123a] COURT OF APPEALS,

State of New York, ss.:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 2nd day of July, in the year of our Lord one thousand nine hundred and forty-seven, before the Judges of said Court.

Witness:—The Hon. John T. Loughran, Chief Judge, Presiding.

John Ludden, Clerk.

HELENE KREIGER, Respondent,

against

LOUIS KREIGER, Appellant

REMITTITUR—July 2, 1947

Be it remembered, That on the 9th day of April, in the year of our Lord one thousand nine hundred and forty-seven, Louis Kreiger, the appellant in this cause, came here [fol. 123b] unto the Court of Appeals, by Edward S. Joseph, his attorney, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Helene Kreiger, the respondent in said cause, afterwards appeared in said Court of Appeals by Charles Rothenberg, her attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Jacob J. Rabinowitz, of counsel for the appellant, and by Mr. Moss K. Schenck of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be

and the same hereby is affirmed, with costs on the authority of *Estin v. Estin* (296 N. Y. 308).

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be affirmed, with costs, &c., as aforesaid.

And hereupon, as well as the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according [fol. 123c] to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

John Ludden, Clerk of the Court of Appeals of the  
State of New York.

Court of Appeals, Clerk's Office

Albany, July 2, 1947.

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

John Ludden, Clerk. (Seal.)



[fol. 124] At a Special Term, Part II, of the Supreme Court of the State of New York, held in and for the County of New York, at the County Courthouse in the Borough of Manhattan, City of New York, on the 21st day of August, 1947.

Present: Hon. Irving L. Hevey, Justice.

HELENE KREIGER, Plaintiff,

AGAINST

LOUIS KREIGER, Defendant

**ORDER MAKING THE JUDGMENT OF THE COURT OF APPEALS THE JUDGMENT OF THE NEW YORK SUPREME COURT**

The above named defendant having appealed to the Court of Appeals of the State of New York, from a judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department, which judgment affirmed an order of the Supreme Court, New York County, signed by Honorable J. A. Gavagan, Justice, granting the plaintiff's motion made pursuant to the Civil Practice Act, Section 1171-B, and directing the entry of a judgment in the plaintiff's favor and against the defendant in the sum of \$3,960.00, and from the judgment in the said amount entered thereon [fol. 125] in the office of the New York County Clerk on April 23rd, 1946; and the Court of Appeals having rendered a decision ordering and adjudging that the aforesaid judgment of the Appellate Division be affirmed, with costs, and further ordering that the records on the Appeal, and the proceedings in the said Court of Appeals, be remitted to the Supreme Court, there to be proceeded upon according to law, which order of the Appellate Division was made on July 2nd, 1947,

Now, on the aforesaid remittitur, and on all the other pleadings and proceedings heretofore had herein, and on motion of Charles Rothenberg, Esq., attorney for the plaintiff, it is,

ORDERED, that the order of the Court of Appeals dated July 2nd, 1947, and the determination contained therein affirming the aforesaid judgment of the Appellate Division, be and the same hereby is made the order and the determination of the Supreme Court of the State of New York, County of New York.

Enter,

I. L. L., J. S. C.

[fol. 126] SUPREME COURT OF THE STATE OF NEW YORK,  
COUNTY OF NEW YORK

(Clerk's certificate to foregoing transcript omitted in printing.)

[fol. 127] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 24, 1947

The petition herein for a writ of certiorari to the Court of Appeals of the State of New York is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 128] SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO PRINTING OF RECORD—Filed December 24, 1947

It Is Hereby Stipulated that printing of the following papers in the Return filed herein, consisting of the Record in the Court of Appeals of the State of New York, Helene Kreiger, Plaintiff-Respondent, vs. Louis Kreiger, Defendant-Appellant, be omitted, provided this stipulation is printed in the Record in place thereof:

Supplemental Index.

Index.

Statement Under Rule 234, pg. 1.

Notice of Appeal, pg. 2.

Order to Show Cause for a Money Judgment, pgs. 6 and 7.

Affidavit of Edward S. Joseph, pg. 17.

Exhibit I (Undertaking on Injunction), pgs. 35, 36, 37, 38, 39 & 40.

Exhibit I (Order to Show Cause for Injunction against Louis Kreiger—re I. Foreign Divorce), pgs. 41, 42 & 43.

Exhibit A (alias Summons in Nevada Divorce Action), pgs. 53 & 54.

Complaint in Nevada Divorce Action, pgs. 54, 55 & 56.

Exhibit I (Summons in New York Separation Action), pg. 66.

Certification of County Clerk, bottom of pg. 77.

Exhibit I (Certified copy of Order), pg. 78.

Certificate of James D. Finch, pgs. 88 & 89.

Exhibit I (Certification of Judgment Roll), pgs. 90, 91 & 92.

Exhibit II (Summons in Nevada District Court for Arraignment); pg. 93.

[fol. 129] Exhibit II (Return on Service of Writ), pg. 94.

Page 97—omit verification and in lieu thereof, print at bottom of pg. 96:

(Verified November 26, 1946 by Helene A. Kreiger.)

Exhibit II (Certification by County Clerk), pg. 98.

Exhibit A (Judgment and Decree of Divorce in Nevada Court), pgs. 105 & 106.

Exhibit II (Certification by Clerk; etc.), pgs. 111 & 112.

Stipulation Waiving Certification, pg. 113.

Additional papers to the Court of Appeals, (page unnumbered).

Notice of Appeal to the Court of Appeals, pgs. 115, 116.

Certification by Appellate Division, pgs. 122 & 123.

Waiver of Certification, pg. 123.

Order making Judgment of the Court of Appeals the Judgment of the New York Supreme Court, pg. 124—unless the Court shall require this to be a part of the Record.

Dated: New York, N. Y.

December 22nd, 1947.

James ———, Counsel for Petitioner; Charles Rothenberg, Counsel for Respondent.

[fol. 130]

[File endorsement omitted]

Endorsed on Cover: Enter George S. Wing. File No. 52,601. New York, Court of Appeals, Term No. 371. Louis Kreiger, Petitioner, vs. Helene Kreiger. Petition for writ of certiorari and exhibit thereto. Filed September 24, 1947. Term No. 371 O. T. 1947.